

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

APPEAL OF:

DYNAMIC CORPORATION)
) CAB Nos. D-1286, D-1297, D-1389
) (Consolidated)
Under Contract No. POKA-2002-B-0089-GP)

TELECONFERENCE ORDER

Filing ID #51341772

The Board conducted a teleconference with the parties on March 25, 2013, to discuss, in particular, three pending motions that were filed by the parties and certain related issues including: (1) Appellant’s motion for sanctions for the District’s discovery noncompliance; (2) Appellant’s motion to strike the District’s Counterclaim; and (3) the District’s motion to continue the hearing on the merits in this matter and to reopen discovery. Pursuant to Board Rule 210.2, and in accordance with the matters discussed with the parties during this teleconference, the Board hereby issues the following order:

- (1) The Appellant filed a motion for sanctions against the District on February 1, 2013. By way of background, Appellant propounded discovery requests on the District on November 22, 2011, which the District failed to respond to for over one year after these requests were served. In this regard, the District also failed to comply with the Board’s recent order to respond to these outstanding requests no later than November 29, 2012. (November 8, 2012 Teleconference Order ¶ 3.) However, the Board finds that the severe sanctions sought by Appellant in this case for this discovery noncompliance are not warranted in light of the underlying circumstances. Specifically, the Board finds that the District’s failure to comply with the Board’s November 8, 2012, Order was primarily the result of delays arising from the departure of the former District attorney handling this case, and the fact that this matter could not be immediately assigned to a new District attorney because of District staffing limitations. Accordingly, the Board denies Appellant’s motion for sanctions.
- (2) The District filed a Counterclaim in this matter on March 5, 2013. Appellant moves to strike the District’s Counterclaim arguing that the Counterclaim introduces new issues and unfairly surprises Appellant at this late stage in the litigation of these consolidated cases. (Appellant’s Mot. to Strike 5-8.) The allegations in the Counterclaim are largely a restatement of the allegations in the May 5, 2010, contracting officer’s final decision that forms the basis of the appeal in CAB No. D-1389, but increases the amount of recovery sought by the District. Thus, the Counterclaim does not include new allegations that were not previously known to the Appellant. The Board, therefore, denies Appellant’s motion to strike the Counterclaim asserted by the District in this matter. Appellant shall file a response to the District’s Counterclaim no later than **April 15, 2013**.

- (3) On March 15, 2013, the District moved the Board for an extended continuance of the hearing on the merits in this case, currently scheduled for April 15-19, 2013, and for an order reopening the non-expert and expert discovery period in this matter.¹ (Dist. Mot. to Continue 5.) The Board finds that the District has presented insufficient grounds for substantially delaying the hearing on the merits in this matter, or for essentially restarting this case by reopening the discovery period for this case. The motion to continue the hearing in this matter and to reopen expert and non-expert discovery is denied. The District shall also complete its responses to Appellant's outstanding November 22, 2011, discovery requests no later than **April 15, 2013**.
- (4) The parties shall file a revised Joint Pretrial Statement in this matter no later than **April 26, 2013**. The revised Joint Pretrial Statement shall include: (a) a statement of the case for each party, including the factual basis for all amounts being claimed by either party; (b) a statement of the legal issues involved in each party's case; (c) the claims and defenses of each party; (d) stipulations of fact; (e) stipulations as to the admissibility of certain exhibits; (f) the parties' respective hearing witness lists, with each witness listed in the order of examination, and which shall also include a proffer of testimony for each witness to be provided at the hearing and the anticipated duration of their examination; and (g) the parties' respective exhibit lists that shall identify the witness through which each exhibit will be introduced.
- (5) The parties shall appear before the Board for a prehearing conference on **May 14, 2013**, at 11:00 a.m.
- (6) The hearing on the merits in these consolidated matters is hereby continued and **shall commence on June 17, 2013, and conclude no later than June 21, 2013**. The hearing shall begin promptly at 10:00 a.m. each day, and shall continue until 4:30 p.m. The District is directed to provide a court reporter for the duration of the hearing and will ensure that the Board receives a hard or electronic copy of the transcript of these proceedings contemporaneous with the District's receipt of the same.

SO ORDERED.

Date: March 27, 2013

/s/ Monica C. Parchment
MONICA C. PARCHMENT
Administrative Judge

¹ The District failed to designate an expert by April 13, 2012, which was the deadline established by the Board's July 28, 2011, Scheduling Order, or to propound any non-expert discovery upon the Appellant prior to the discovery cut-off date in the Scheduling Order.

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